

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

UNITED STATES OF AMERICA,

§

*Plaintiff,*

§

v.

CASE NO. 7:19-cv-99

853.33 ACRES OF LAND, MORE OR  
LESS, SITUATE IN STARR COUNTY,  
STATE OF TEXAS; AND STEVEN  
JOSEPH KOBERNAT, ET AL.,

§

*Defendants.*

§

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**COMPLAINT IN CONDEMNATION**

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1. This is a civil action brought by the United States of America at the request of the Secretary of the Department of Homeland Security, through the Acquisition Program Manager, Wall Program Management Office, U.S. Border Patrol Program Management Office Directorate, U.S. Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security, for the taking of property under the power of eminent domain through a Declaration of Taking, and for the determination and award of just compensation to the owners and parties in interest.

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338.

3. The interest in property taken herein is under and in accordance with the authority set forth in Schedule "A."

4. The public purpose for which said interest in property is taken is set forth in Schedule "B."

5. The legal description and map or plat of land in which certain interests are being

acquired by the filing of this Complaint, pursuant to the Declaration of Taking, are set forth in Schedules "C" and "D."

6. The interest being acquired in the property described in Schedules "C" and "D" is set forth in Schedule "E."

7. The amount of just compensation estimated for the property interest being acquired is set forth in Schedule "F."

8. The names and addresses of known parties having or claiming an interest in said acquired property are set forth in Schedule "G."

9. Local and state taxing authorities may have or claim an interest in the property by reason of taxes and assessments due and eligible.

WHEREFORE, Plaintiff requests judgment that the interest described in Schedule "E" of the property described in Schedules "C" and "D" be condemned, and that just compensation for the taking of said interest be ascertained and awarded, and for such other relief as may be lawful and proper.

Respectfully submitted,

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Southern District of Texas

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# **SCHEDULE A**

**SCHEDULE A**

**AUTHORITY FOR THE TAKING**

The property is taken under and in accordance with 40 U.S.C. §§ 3113 and 3114, which authorize the condemnation of land and the filing of a Declaration of Taking; the Act of Congress approved September 30, 1996, as Public Law 104-208, Division C, Section 102, 110 Stat. 3009-546, 3009-554-55, as amended and codified at 8 U.S.C. § 1103(b) & note; and the Act of Congress approved March 23, 2018, as Public Law 115-141, div. F, tit. II, 132 Stat. 348, which appropriated the funds that shall be used for the taking.

# **SCHEDULE B**

**SCHEDULE B**

**PUBLIC PURPOSE**

The public purpose for which said property is taken is to conduct surveying, testing, and other investigatory work needed to plan the proposed construction of roads, fencing, vehicle barriers, gates, security lighting, cameras, sensors, and related structures designed to help secure the United States/Mexico border within the State of Texas.

# SCHEDULE C

**SCHEDULE C**

**LEGAL DESCRIPTION**

Starr County, Texas

Tract: RGV-RGC-9046

Owner: Steven Joseph Kobernat, et al.

Acres: 853.33

The Southern 1/3 of a 2560 acre tract of land more specifically described in Special Warranty Deed with Vendor's Lien, Document # 86166, Volume 379, Page 617 recorded on September 18, 1974, in the Deed Records of Starr County:

The most Southerly One-Third, 853 1/3 acres, out of that certain tract of 2560 acres of land in and out of Porcion No. 97 of the ancient jurisdiction of Camargo, Mexico, originally granted by the Spanish Government, in America in the year 1767 to Bartoleme de Trevino, subsequently confirmed to him, by his heirs and legal assigns, by the legislature of the State of Texas, by an act, approved February 10, 1852, and thereafter pursuant to said Act, patented by the State of Texas, by Patent No. 205, Vol. 23, issued March 27, 1880 and recorded in Book F., pages 89-90 of the Deed Records of Starr County, Texas, said 2560 acres tract hereby conveyed being all the land conveyed within the following metes and bounds as per survey thereof made December 4, 1912 to April 28, 1913, with variation of 8 degrees 45 minutes East, and adopted in the deed of partition between Daniel Yturria and others, dated August 1, 1913, and recorded in Book 37, Pages 152-160 of the Deed Records of said County of Starr, partitioning among them the owners in common the whole of Porciones Nos. 97 and 98 in Starr County, Texas, and which 2560 acres is also fully described in the deed by G.A. Guerra, Sheriff of Starr County, Texas, to Annie Reilly, dated July 7, 1936, recorded in Volume 91, pages 518-22 of the Deed Records of Starr County, Texas, to which instruments and descriptions therein reference is here made for the purpose of describing the tract hereby conveyed; said 853 1/3 acre tract being described by metes and bounds as follows:

Beginning at a post set on the present bank of the Rio Grande River, the SE Corner of Yturria's Share No. 1;

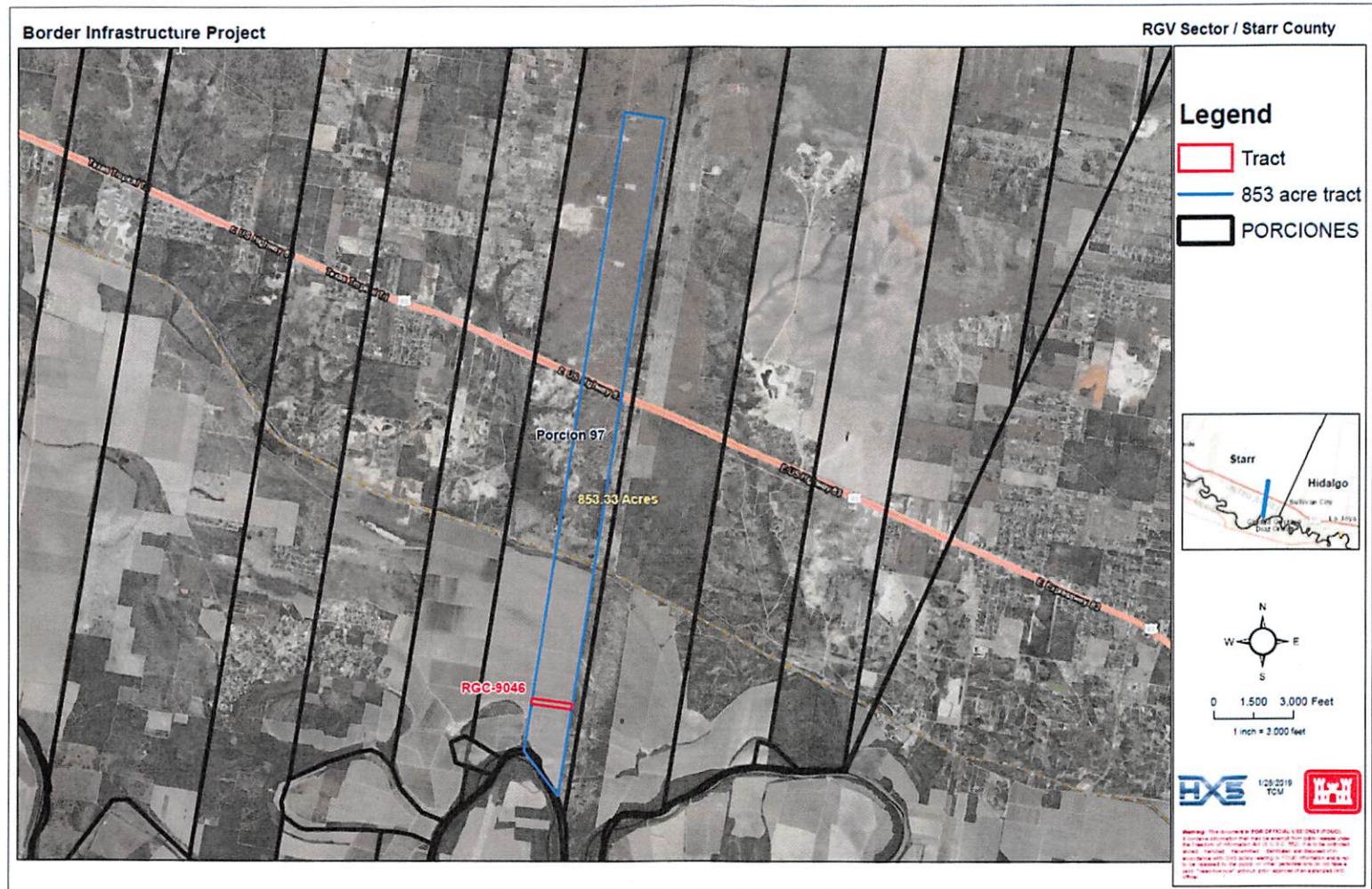
Thence, with the East Line of said Share No. 1 and the west line of Share No. 2 North 8 degrees 56 minutes East 8838.7 varas to a point in said line for the Northwest corner of the tract; said corner being South 8 degrees 56 minutes West, 17677.3 varas from the Northeast corner of said Yturria's Share No. 1; Thence parallel with the North line of said Porcion 97, South 81 degrees 17 minutes East 564.8 varas to a point in the West line of Yturria's Share No. 3 for the Northeast corner of this tract;

Thence South 8 degrees 56 minutes West 8906.7 varas with the West line of Yturria's Share No. 3 to a post on the present bank of the Rio Grande River;

Thence up the North bank of said river North 60 degrees 45 minutes West 150 varas, North 53 degrees 0 minutes West 487.7 varas to the place of beginning.

# **SCHEDULE D**

## SCHEDULE D



### LAND TO BE CONDEMNED

Tract: RGV-RGC-9046

Owner: Steven Joseph Kobernat, et al.

Acreage: 853.33

\* The case caption identifies acreage for the entire parent tract as identified on the map above; access to the entire parent tract may be necessary to complete a survey of the proposed tract outlined in red on the map above.

# **SCHEDULE E**

**SCHEDULE E**

**ESTATE TAKEN**

Starr County, Texas

Tract: RGV-RGC-9046

Owner: Steven Joseph Kobernat, et al.

Acres: 853.33

The estate taken is a temporary, assignable easement beginning on the date possession is granted to the United States and ending 12 months later, consisting of the right of the United States, its agents, contractors, and assigns to enter in, on, over and across the land described in Schedule C to survey, make borings, and conduct other investigatory work for the purposes described in Schedule B and to access adjacent lands; including the right to trim or remove any vegetative or structural obstacles that interfere with said work; reserving to the landowners, their successors and assigns all right, title, and privileges as may be used and enjoyed without interfering with or abridging the rights hereby acquired; subject to minerals and rights appurtenant thereto, and to existing easements for public roads and highways, public utilities, railroads and pipelines.

# **SCHEDULE**

# **F**

**SCHEDULE F**

**ESTIMATE OF JUST COMPENSATION**

The sum estimated as just compensation for the land being taken is ONE HUNDRED DOLLARS AND NO/100 (\$100.00), to be deposited herewith in the Registry of the Court for the use and benefit of the persons entitled thereto; and, an additional sum determined at the conclusion of the temporary estate described in Schedule E to constitute actual damages, if any.

# **SCHEDULE G**

**SCHEDULE G****INTERESTED PARTIES**

The following table identifies all persons who have or claim an interest in the property condemned and whose names are now known, indicating the nature of each person's property interest(s) as indicated by references in the public records and any other information available to the United States. *See Fed. R. Civ. P. 71.1(c).*

Interested Party	Reference
<b>Steven Joseph Kobernat 507 Adams Street, Apt. 78 San Antonio, TX 78210</b>	RGV-RGC-9046 December 28, 2012- Gift Deed without warranty - Document# 00309094 Volume 1369, Page 214; Deed records of Starr County
<b>Corydon James Kobernat 15504 Toerpperwein Road San Antonio, TX 78233</b>	
<b>Gregory George Kobernat 443 Tophill Road San Antonio, TX 78209</b>	
<b>Ann-Marie Littlefield 77 County Road 5, #55 Espanola, NM 87532</b>	
<b>Steven Joseph Kobernat, as Independent Executor in the Estate of Leonard J. Kobernat, Deceased 507 Adams Street, Apt. 78 San Antonio, TX 78210</b>	April 18, 2011 – Order Appointing Successor Independent Executor - Volume 2060, Page 8260; Probate Records of Bexar County and Bexar County Probate Case #2010-PC-2343

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<b>I. (a) PLAINTIFFS</b>		<b>DEFENDANTS</b>						
<p><b>(b)</b> County of Residence of First Listed Plaintiff _____  <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p>		<p>County of Residence of First Listed Defendant _____  <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p>						
<p><b>(c)</b> Attorneys (<i>Firm Name, Address, and Telephone Number</i>)</p>		<p>Attorneys (<i>If Known</i>)</p>						
<b>II. BASIS OF JURISDICTION</b> ( <i>Place an "X" in One Box Only</i> )		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> ( <i>Place an "X" in One Box for Plaintiff and One Box for Defendant</i> )						
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>		<input type="checkbox"/> PTF <input type="checkbox"/> DEF Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4						
<input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>		<input type="checkbox"/> PTF <input type="checkbox"/> DEF Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5						
		<input type="checkbox"/> PTF <input type="checkbox"/> DEF Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6						
<b>IV. NATURE OF SUIT</b> ( <i>Place an "X" in One Box Only</i> )								
<a href="#">Click here for: Nature of Suit Code Descriptions.</a>								
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES				
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark				
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/ Disabilities - Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes				
			<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609					
			<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions					
<b>V. ORIGIN</b> ( <i>Place an "X" in One Box Only</i> )								
<input type="checkbox"/> 1 Original Proceeding		<input type="checkbox"/> 2 Removed from State Court		<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District <i>(specify)</i>	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
		Cite the U.S. Civil Statute under which you are filing ( <i>Do not cite jurisdictional statutes unless diversity</i> ):						
<b>VI. CAUSE OF ACTION</b>		Brief description of cause:						
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.		<b>DEMAND \$</b>		CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>VIII. RELATED CASE(S) IF ANY</b>		<i>(See instructions):</i>		<b>JUDGE</b> _____		<b>DOCKET NUMBER</b> _____		
DATE		SIGNATURE OF ATTORNEY OF RECORD						
<b>FOR OFFICE USE ONLY</b>								
RECEIPT #		AMOUNT		APPLYING IFP		JUDGE		
						MAG. JUDGE		